IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 04.06.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.835 of 1999

Arokkianathan .. Appellant

vs.

The Inspector of Police,
Food Cell CID, South,
Chennai. .. Respondent

Prayer: This appeal has been filed under Section 374[3][a] of Cr. P.C. preferred against judgment dated 27.09.1999 made in S.T.C.No.13 of 1992 on the file of the Special Judge, Special Court for EC Act, Chennai.

For Appellant : Mr.T.S.Sasikumar
For Respondent : Mr.V.R.Balasubramanian,
Additional Public Prosecutor.

JUDGMENT

This appeal has been preferred against the judgment in S.T.C.No.13 of 1992 on the file of the Special Judge for EC Act cases, Chennai. The appellant is A2 in the above STC, who has been convicted and sentenced to undergo 3 months RI and a fine of Rs.500/- with default sentence under clause 6(2) and (3) of TNSC (RDCS) order 1982 r/w section 7(1) and (2) of the EC Act 1955.

2. Admittedly the appellant A2 was the packer of the fair price shop Ramco at Peer Palayam Tharga Road, Chennai-19. The specific charge against the accused/Appellant herein (A2) is that he had supplied 548 Kgs of rice, 35.5 kgs of sugar, 200 kgs of wheat, 9 kgs of palm-oil, 200 litres of kerosine worth about Rs.2785.65 to the non-ration card holders. Before the trial Court P.Ws.1 to 3 were examined and Ex.P.1 to Ex.P.38 were marked, after framing charges and also after following the formalities like furnishing copies under Section 207 of Cr.P.C., and Questioning etc.

3. P.W.1 is the Superintendent of the Consumer Protection Department of Mylapore Zone in the office of the Assistant Commissioner of Civil supply. According to him, he along with Co-operative Sub-Registrar Thiru.Swaminathan inspected the ration shop by name Ramco Ration shop,

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Beer Payilvan Tharga road, Chennai, wherein A2 was working as a packer and that his inspection report is Ex.P.1 and during his inspection he could find shortage of 548 kgs rice, 35.5 kgs sugar, 200 kgs wheat and 9 kgs palm-oil and 200 litres of kerosine and that without distributing the said goods intended to be distributed to the ration card holders the accused had distributed to the persons who don't possess ration cards.

4. P.W.2, another Superintendent in the office of the Assistant Commissioner of Civil Supply and Consumer protection department, Mylapore Zone, would depose that he had examined 10 ration card holders and found no entries in their ration cards for having distributed the PDS goods through the said Ramco fair price shop at Beer Payilvan Tharga Road, Chennai. Ex.P.6 is the list prepared by him and Ex.P.7 to P.16 are the statements of the ration card holders. Ex.P.27 is the bill for the supply of 9 kgs of rice, 10 litres of kerosine to one Narayanan, holder of ration card No.141353. P.W.2 would specifically state that on examination of the said Narayanan he has informed him that the above said ration goods were not supplied to him under Ex.P.27. Ex.P.28 to Ex.P.36 are the list for the examination of holders of 9 ration cards. Ex.P.17 is the statement of Thiru.Narayanan.

5. P.W.3 is the Investigating Officer, who had registered the case under Cr.No.130 of 1991 under clause 6(2) and (3) TNSC (RDCS) Order 1982 r/w section 7(1) and (2) of EC Act. Ex.P.37 is the copy of the FIR. He has examined the witnesses and recorded their statements and after completing the investigation he has filed the charge sheet against the accused.

6. When incriminating circumstances were put to the accused, he has denied his complicity with the crime. After going through the oral and documentary evidence, the learned Trial judge has come to the conclusion that the charge against the accused has been proved beyond any reasonable doubt and accordingly convicted and sentenced the accused under the above provisions of law to undergo 3 months RI and a fine of Rs.500/- with default sentence. Aggrieved by the findings of the learned Trial Judge, A2 has preferred this appeal.

7.Now the point for determination in this appeal is whether the findings of the learned trial judge is sustainable for the reasons stated in the memorandum of appeal?

8. There is no representation for the appellant. Heard the learned Additional Public Prosecutor and considered his submissions.

9. The Point:- As correctly admitted by the learned Additional Public Prosecutor the prosecution has not examined before the trial Court even a single ration card holder who was examined by the Investigating Officer on the basis of the complaint against the accused. Even though P.W.2 has produced Ex.P.7 to 17 statements of 10 ration card holders, according to

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the prosecution, they have not received the ration goods from A2, the appellant herein, none of them was examined. The specific charge against A2 is that he has not distributed the ration goods of rice, sugar, wheat, palm-oil and kerosine to the value of Rs.2785.65 to the non ration card holders. Not even a single ration card holder, who have received the above said ration items, was examined before the Trial Court to substantiate the allegation that A2/appellant herein had distributed 548 kgs rice, 35.5 kgs sugar, 200 kgs wheat, 9 kgs palm-oil and 200 litres of kerosine to the non-ration card holders. Admittedly the appellant is only a packer and not a bill clerk. The learned Additional Public Prosecutor in all fairness informed the Court that after registration of the complaint the accused had paid Rs.2785.65 to the government thereby setting right the loss alleged to have been incurred to the Civil Supplies Department. Only on the basis of the evidence of P.W.1 to P.W.3, official witnesses, the learned Trial Judge has come to an erroneous conclusion that the prosecution has proved the guilt of the accused beyond any reasonable doubt and consequently convicted and sentenced the accused, which in my opinion is liable to the set aside for the reasons that no non-ration card holder, who is said to have received the ration goods was examined to substantiate the contentions of the prosecution. Point is answered accordingly.

10. In the result, the appeal is allowed setting aside the convicion and sentence awarded by the learned Trial Judge in S.T.C.No.13 of 1992 on the file of the Special Judge for EC Act Cases, Chennai, and accordingly the appellant/A2 is acquitted of all charges levelled against him and is hereby set at liberty. Fine amount, if any, paid is to be refunded to the appellant. Bail bonds shall stand cancelled.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ssv

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To,
1. The Inspector of Police,
Food Cell CID, South
Chennai.

2. The Special Judge,
Special Court for EC Act Cases,
Chennai.

3. The Public Prosecutor,
High Court, Madras.

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